

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

JUDY RICE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:21-cv-2603
)	
NAPACO PROPERTIES, LLC and)	
WHITE RIVER VALLEY PIZZA HUT,)	
LTD., LLC.)	
Defendants.)	

NOTICE OF REMOVAL

Defendants, Napaco Properties, LLC and White River Valley Pizza Hut, LTD., LLC. (collectively, “Pizza Hut Defendants”) by counsel, pursuant to 28 U.S.C. §§ 1441, 1446, and 1332, hereby give notice of removal of this action from the Circuit Court of Delaware County, Indiana, to the United States District Court for the Southern District of Indiana, Indianapolis Division, and in support thereof state the following:

Background

1. On June 24, 2021, Plaintiff filed a Complaint for Damages in the Circuit Court of Delaware County, Indiana under Cause No. 18C02-2106-CT-000071. (*See* Plaintiff’s Complaint, the “Complaint”)

2. Plaintiff’s Complaint alleges that on February 4, 2020, Plaintiff fell at the Defendants’ restaurant in Delaware, County, Indiana, and that Plaintiff sustained damages as a result of the incident. (*See* Complaint, ¶¶ 4-18)

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 94(b)(1) and 1441(a), because the United States District Court for the Southern District of Indiana, Indianapolis

Division, is the federal judicial district division embracing the Circuit Court of Delaware County, Indiana, where this action is pending.

4. By filing this Notice of Removal, Pizza Hut Defendants do not waive their rights to object to service of process, the sufficiency of process, jurisdiction over the person, or venue, and Pizza Hut Defendants reserve the right to assert any defenses and objections to which they may be entitled.

5. This Court has original subject matter jurisdiction under 28 U.S.C. § 1332 and this case is removable under 28 U.S.C. §§ 1441 and 1446, as set forth below.

Removal is Timely

6. 28 U.S.C. § 1446(b) provides the following limitation on removal of civil actions

The notice of removal of a civil action or proceeding shall be filed **within 30 days after the receipt by the defendant,** through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has been filed in court and is not required to be served on the defendant, whichever period is shorter.

(Emphasis added).

7. Pizza Hut Defendants first received a copy of the Complaint for Damages on or about September 27, 2021, via their counsel of record.

8. Pursuant to 28 U.S. Code § 1446(b)(C), the deadline for removal of this civil action is 30 days from the date of receipt by the Pizza Hut Defendants of a copy of the summons and First Amended Complaint.

9. Because Pizza Hut Defendants are filing this Notice on October 8, 2021, within thirty (30) days after Pizza Hut Defendants received a copy of the Complaint, removal is timely.

Complete Diversity of Citizenship Exists Among the Parties

10. Plaintiff, Judy Rice, is a citizen of the State of Kentucky

11. Defendant, Napaco Properties, LLC, is a citizen of the State of Ohio. Napaco Properties, LLC is a limited liability company (“LLC”). An LLC’s citizenship is determined by the citizenship of each of its members. *Wise v. Wachovia Securities, LLC*, 450 F.3d 265, 267 (7th Cir. 2006). Gary W. Coomer and Nancy J. Coomer are the sole members of Napaco Properties, LLC and are citizens of the State of Ohio. Napaco Properties, LLC is therefore a citizen of Ohio.

12. Defendant White River Valley Pizza Hut Ltd., LLC is a citizen of the State of Ohio. White River Valley Pizza Hut Ltd., LLC is a limited liability company (“LLC”). An LLC’s citizenship is determined by the citizenship of each of its members. *Wise v. Wachovia Securities, LLC*, 450 F.3d 265, 267 (7th Cir. 2006). Gary W. Coomer and Nancy J. Coomer are the sole member of White River Valley Pizza Hut Ltd., LLC and are citizens of the State of Ohio. White River Valley Pizza Hut Ltd., LLC is therefore a citizen of Ohio.

13. The controversy in this action is therefore entirely between citizens of different states of the United States, and Pizza Hut Defendants desire to remove said cause from the Circuit Court of Delaware County, Indiana, to the United States District Court for Southern District of Indiana pursuant to 28 U.S.C. 1332(a)(1) and 1441(a).

The Amount in Controversy Requirement is Satisfied

14. The amount in controversy requirement of 28 U.S.C. § 1332 is also satisfied. Under 28 U.S.C. § 1332(a), the amount in controversy in a case where federal jurisdiction is based on diversity of citizenship must exceed \$75,000, exclusive of interests and costs. The defendant invoking federal jurisdiction has the burden of proving by a preponderance of the evidence that the amount in controversy meets the jurisdictional minimum. *Meridian Sec. Ins.*

Co. v. Sadowski, 441 F.3d 536, 543 (7th Cir. 2006). Where, as here, the Complaint does not specify the amount in controversy, the removing defendant must show “a reasonably probability that the jurisdiction minimum has been met.” *Malinowski v. Walgreen Co.*, NO. 2:08-CV-173 RM, 2008 WL 2704740, at *3 (N.D. Ind. July 3, 2008) (citing *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446, 449 (7th Cir. 2005)). “[A] good-faith estimate of the stakes is acceptable if it is plausible and supported by a preponderance of the evidence.” *Oshana v. Coca-Cola Co.*, 472 F.3d 506, 511 (7th Cir. 2006).

15. Pre-suit, the last demand exceeded \$75,000. Therefore, the amount in controversy in this cause exceeds \$75,000, exclusive of interests and costs.

16. Because both of the requirements for federal diversity jurisdiction are satisfied, this case is removable by Defendants.

Removal is Appropriate

17. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) and removal is appropriate pursuant to 28 U.S.C. §§ 1441 and 1446 because there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,000 exclusive of interests and costs.

18. Pizza Hut Defendants attach as Exhibit “A” all pleadings, motions, orders, and all other filings filed in the state court, organized in chronological order by the state court filing, in compliance with 28 U.S.C. §§ 1446(a).

19. Attached hereto as Exhibit “B” is a copy of Plaintiff’s Complaint.

20. This Notice of Removal is being served upon Plaintiff and contemporaneously filed with the Clerk of Circuit Court of Delaware County, Indiana. Copies of the Notice of

Filing Notice of Removal, together with the Notice of Removal are being served upon Plaintiff pursuant to 28 U.S.C. § 1446(d).

21. The filing fee of \$400.00 has been paid to the Clerk of the United States District Court at the time of filing this Notice of Removal.

22. A copy of Pizza Hut Defendants' Notice to Plaintiff and Clerk of the Delaware County Circuit Court of Defendants' Application to Remove Cause to Federal Court is attached hereto as Exhibit "C."

Respectfully submitted,

KIGHTLINGER & GRAY, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2021, the foregoing was served upon the following via regular mail and/or the Court's electronic filing/notification system, as follows:

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